COMMONWEALTH OF PUERTO RICO
Office of the Attorney General
SAN JUAN, PUERTO RICO 00902

ADDRESS COMMUNICATIONS TO
THE ATTORNEY GENERAL

February 11, 1994

VIA TELECOPY, COPY BY MAIL

Robert Hazen, Esq.
U.S.E.P.A. Region II
26 Federal Plaza
New York, New York 10278

Re: Attorney General Statement
Non-Hazardous Solid Waste
Permit Program Application

Dear Mr. Hazen:

This is to confirm our conversation of February 9, 1994, in which you stated that EPA requests the Attorney General to state he will not oppose citizen intervention in cases arising under 33 CFR Section 258 Subpart C. You explained that your main concern, and the reason for such request is that since the Non-Hazardous Solid Waste Permit Program will be soon delegated to Puerto Rico's Environmental Quality Board, EPA wants to assure by all means that citizens will be allowed to intervene in the aforementioned cases.

As I explained to you, citizen intervention in Puerto Rico is determined by Rule 21.1 of the Local Rules of Civil Procedure. At your request I am enclosing the cases cited in the annotation of the aforementioned rule.

As I further mentioned, the Attorney General represents all governmental entities that could be involved in a case related to the non-hazardous solid waste permit program and regulations. There is a varied scope of situations which could give rise to an action of this nature, and the development of such actions once initiated is unpredictable. We consider it inappropriate to make the statement you require because it would beforehand impair the effectiveness of our legal representation. The Department of Justice has an inescapable duty to provide a legal representation of excellence. Inherent to this duty is the freedom of choice to do whatever best serves the interests of the Commonwealth of Puerto Rico and its entities. As we hope you understand this is something we are not able to negotiate.

I expect the cases hereby furnished will show you that in Puerto Rico, intervention in any civil action is granted whenever citizens demonstrate they have a legitimate interest. If on the other hand, you still want a statement from the Attorney General on the subject of intervention, contact me as soon as posible so we can discuss this matter and find a language that suits us both. As always I can be reached at (809) 721-5626.

Sincerely,

Rosa Corrada
Attorney
Environmental Unit
Department of Justice

enclosures

READY MIX CONCRETE, INC., Plaintiff and Appellant, v. RAMIREZ DE ARELLANO & CO., INC. and EDUARDO FERRER BOLIVAR, Defendants; CHICAGO TITLE INSURANCE COMPANY, Intervenor-Appellee.

No. R-79-443. Decided April 21, 1981.

1. RULES OF CIVIL PROCEDURE - PARTIES - INTERVENTION - IN GENERAL - IN GENERAL.
The intention of Rule 21.1 of the 1979 Rules of Civil Procedure is to allow more flexibility in the intervention of persons not originally included as parties to a suit.

2. ID. - ID. - ID. - ID. - ID.
The standard to be used when determining whether to recognize a party's right to intervene under Rule 21.1 of the 1979 Rules of Civil Procedure is of a practical, not a conceptual nature.

3. ID. - ID. - ID. - PROCEDURE - IN GENERAL.
The utility of the procedural device established in Rule 21.1 of the 1979 Rules of Civil Procedure lies in offering protection to a large and undefined group of people with varied interests, on occasions of tremendous financial or legal importance.

4. ID. - ID. - ID. - IN GENERAL - INTERVENTION BY RIGHT.
When an attachment is entered on real property under the horizontal property regime to secure the effectiveness of a possible judgment in a case for collection of money against the builder and owner of the building, if the mortgagee and the unit owners of the building do not appear within the principal suit to defend themselves from the effects of the attachment, the mortgagee's title insurance company has a right to intervene in the suit under Rule 21.1 of the 1979 Rules of Civil Procedure to assert a defense against the final consequences of the attachment.

5. COMMON OWNERSHIP - HORIZONTAL PROPERTY - DEED - RECORDATION.
As a question of law, an apartment in a building under the horizontal property

regime is not segregated and does not become a separate and autonomous property by the mere fact that the corresponding master deed submitting the building to the horizontal property regime was executed and recorded.

6. ATTACHMENT, GARNISHMENT AND EXECUTION OF JUDGMENT - ATTACHMENT IN GENERAL - LEVY, LIEN, AND CUSTODY AND DISPOSITION OF PROPERTY - PROPERTY OR INTERESTS AFFECTED, AND EXTENT OF LIEN.
Once an attachment is levied on a building submitted to the horizontal property regime--after the condominium's master deed has been recorded at the Registry of Property--it encumbers all the apartments sold and registered after the entry of the attachment on the building, but not those sold before said attachment.

SUMMARY JUDGMENT of Federico Montañez Delerme, Judge (Humacao), vacating the entry of an attachment of a real property under the horizontal property regime, and ordering the cancellation of the bond posted to dissolve said attachment. Reversed, and another one shall be rendered upholding the validity of the attachment involving the apartments in the instant case.

McConnell, Valdés, Kelley, Sifre, Griggs & Ruiz Suria and Néstor M. Méndez Gómez for plaintiff. Edilberto Berríos Pérez for intervenor-appellee Chicago Title Insurance.

IN THE SUPREME COURT OF PUERTO RICO

Ready Mix Concrete, Inc.,

Plaintiff and appellant

v. No. R-79-443 Review

Ramírez de Arellano & Co., Inc. and Eduardo Ferrer Bolívar,

Defendants

Chicago Title Insurance Company,

Intervenor-appellee

MR. JUSTICE DAVILA delivered the opinion of the Court.

San Juan, Puerto Rico, April 21, 1981

In order to assure the effectiveness of the judgment in an action for collection of money, Ready Mix Concrete, Inc. obtained a writ of attachment for $45,000.00 against defendants Ramírez de Arellano & Co., Inc. and Eduardo Ferrer Bolívar.

The attachment was executed by entering it in the Property Registry on a piece of real property on which two apartment buildings are located, and which Ramírez de Arellano had previously submitted to the horizontal property regime under the name Garden Hills Estates Condominium.

After the horizontal property regime was created, but before the attachment was entered, Ramírez de Arellano alienated eighty apartments that were recorded as independent properties. After the attachment, it alienated sixteen other apartments[1] that were also recorded as independent properties, but subject to the previously entered $45,000.00 attachment.

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[1]Said alienations were carried out by the execution of public deeds of "segregation, release, and sale."

Some time later, Chicago Title Insurance Co. filed a motion to intervene alleging that it was the title insurer of several mortgages executed by purchasers of apartments in Garden Hills Estates in the name of Chase Manhattan Bank, N.A., and that the policies issued by Chicago in favor of Chase assured the latter that the mortgages executed were first mortgages. It also alleged that if the Ready Mix attachment prevailed, it (Chicago) would be liable to Chase for any losses suffered as a result of said attachment. In its prayer, Chicago asked the Court to declare the attachment null. It obtained the release of the attachment by posting a $45,000.00 bond.

Chicago moved for summary judgment, which the court granted. It found that the attachment was null and that the bond posted by Chicago to release it should be cancelled. The court based its decision on the following: that the apartments were segregated "as a question of law when the master deed was executed and recorded, and the property was submitted to the Horizontal Property Regime."

Ready Mix petitioned, and we agreed to review. It assigns as the first error that Chicago Title Insurance Co. has no right to intervene.

Chicago Title is a title insurance company. It issued a policy in Chase's name, obliging itself to guarantee that the mortgages constituted in the sales of the apartments in question would be preferential liens. In the main action for collection of money, mortgagee Chase did not challenge the legality of the attachment, and neither did the record owners of the sixteen affected apartments.[2]

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[2]Chase only filed a petition before the Property Registrar of the Sixth Section of San Juan, where it substantially alleged that the

[1-3] Rule 21.1 of the Rules of Civil Procedure of 1979 provides that any person has a right to intervene in an action when claiming a right or interest relating to the property or transaction that is the object of the action and which could, in fact, be affected by the final disposition of the action.[3] In the circumstances of this case, Chicago Title Insurance Co. has a right to intervene even under the prior text of the rule, which also included as a requirement the inadequate representation of the interest of the intervening party.[4] The present version of the rule embraces the

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attachment obtained by Ready Mix was effective over the land on which the buildings of Garden Hills Estates were built, which land is a common element because a horizontal property regime exists over it. It also stated in the aforesaid petition that "5 . . . Chase Manhattan Bank, N.A. is an interested party affected by this entry because it is the financial entity financing the mortgage loans on the apartments that have been sold or are being sold, and said entry of attachment affects the validity and negotiability of the promissory notes issued in favor of this institution with mortgage security over the apartments." Chase then limits itself to ask the Registrar to correct this "error."

[3]Said Rule provides:

"Upon timely application anyone shall be permitted to intervene in an action: (a) when a statute or these rules confer an unconditional right to intervene; or (b) when the applicant claims a right or an interest relating to the property or transaction which is the subject of the action which may as a practical matter be impaired by the final disposition of the action."

[4]The prior text of Rule 21.1 provided:

"Upon timely application, anyone shall be permitted to intervene in an action (a) when a statute or these rules confer an unconditional right to intervene; or (b) when the representation of the applicant's interest by existing parties is or may be inadequate and the applicant is or may be bound by a judgment in the action or (c) when the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the court."

expansionist trend that has revealed itself in this procedural area since the amendment in 1966 of federal Rule 24, from which our Rule 21 is derived, to allow more flexibility in the intervention of persons not originally included as parties to a suit. The standard to be used when determining if the right to intervene is recognized or not is of a practical, not a conceptual nature. 3B Moore, Federal Practice: Civil § 24.03. The utility of this procedural device lies in offering protection to a large and undefined group of people with varied interests, on occasions of a tremendous financial or legal importance. 3B Moore, supra, § 24.02 et seq.

[4] In this case, since those called upon to defend themselves from the effects of the attachment in the first place did not do so, Chicago Title could be adversely affected by the execution of the judgment that could in due time be rendered. As a result of its relation of insured by Chicago Title, Chase had a way of recovering the possible loss of its mortgage security, but Chicago Title did not, which assured Chase that the mortgages were of a preferred rank. Any declaration as to the contrary on the part of the court forced Chicago Title to compensate Chase in accordance with the terms agreed to in the policy. The entry of the attachment, Chase's and the unit owners' nonappearance, and the eventual consequences of the attachment constituted an interest in the object of the suit that was important enough as to justify a recognition of Chicago Title's right to intervene in the present case under Rule 21.1(b).

Appellant's remaining assignments of error may be considered as included in the following question:

at what time, from the juridical point of view, do the different apartments of a building under the horizontal property regime become individual units of real property? The fixing of this moment is a determining factor in the solution of the controversy raised in this petition for review--in other words, whether or not the attachment obtained by appellant Ready Mix in fact encumbers the sixteen apartments sold and registered after the entry of the attachment.

The establishment of the horizontal property regime begins with the registration in the Property Registry of the master deed of the building to be submitted to said regime under the Horizontal Property Act. Consejo de Titulares v. Vargas, 101 D.P.R. 579, 582 (1973).

[5] Now then, does the registration of the master deed operate ex proprio vigore as a segregation of the apartments constituted as horizontal property? Is the fact that a building is subject to the horizontal property regime, and that said building has apartments that may be separately owned, equivalent, in its juridical effect, to the creation, outside the Registry and by operation of law, of autonomous and separate pieces of real property?

Article 4 of the Horizontal Property Act, 31 L.P.R.A. § 1291b, provides as follows:

> Once the property is submitted to the horizontal property regime, the apartments mentioned in section 1291a of this title may be individually conveyed and encumbered and be the object of ownership or possession, . . . entirely irrespective of the rest of the property of which they are a part, and the corresponding titles shall be recordable in the Registry of Property according to the provisions of this chapter and of the Mortgage Law. (Underscore supplied.)

[6] As we see, the law clearly requires the apartments to be identified and individualized beforehand within the main

property. What respondent then argues is that, once identified and individualized, they in fact constitute, for all practical or legal purposes, separate pieces of real property. This is not correct. Roca Sastre sustains that "the establishment of horizontal property does not imply the physical division of the property built or being built, but its subordination or submission to the specific horizontal property regime, for, even in the case of the division of jointly owned real property to submit it to horizontal property, a distinction must be made between the division seen as a cessation of the co-ownership and the establishment of the horizontal property regime." III Derecho Hipotecario 363 (7th ed. 1979).

And Ventura-Traveset, commenting on a provision analogous to the above-cited section 1291b, says that a piece of real property submitted to the horizontal regime: ". . . loses its unitary nature to become a set of differentiated apartments . . . susceptible of independent use, that in juridical terms acquire individuality when they become the object of separate property." Derecho de Propiedad Horizontal 70 (3rd ed. 1976) (Ed. Bosch, Barcelona). Furthermore, said author is of the opinion that the act of submitting a building to the horizontal property regime, on the one hand, and the individualization of the apartments into separate properties, on the other, occur at two different moments, juridically speaking, even though in terms of space and time both transactions are set down in the same public instrument. On this subject he states:

> The owner or owners of a whole building wish to sell only one apartment, for the time being. For said purpose, they make a formal declaration that they have decided to constitute a horizontal property regime.

> This declaration is registered for the main property. . . .
>
> It seems that we have to distinguish two moments: the creation of the regime and the separation of each one of the apartments. Op. cit. at 148.

Likewise, Batlle understands that the constitution of a building as horizontal property does not operate automatically to make the apartments autonomus from the main property. On this point, he says:

> This juristic act does not entail an act of physical division of the building . . . [w]hen there is no co-ownership since the beginning, as happens in the cases of the sole owner who sells by apartments and of the builders who have established this type of ownership beforehand, which is not co-ownership, it is a contradiction to speak of division. Batlle, La propiedad de casas por pisos 83 (7th. ed. 1973) (Editorial Marfil, Alcoy, España).

When the attachment was entered in the Property Registry, the sixteen apartments involved did not yet have a separate recordation and property number; they were described in the entry of the main property in the name of Ramírez de Arellano & Co., Inc., the original owner of the real property constituting the horizontal property regime, as provided by art. 26 of the Horizontal Property Act, as amended. 31 L.P.R.A. § 1292d. Therefore, the owners of the apartments sold after the entry of the attachment, as well as Chase and Chicago, were, or should have been aware of the encumbrances on the main property, which charges also encumbered the as yet unsegregated and unsold apartments. Said awareness is presumed from the essential publicity given by the Registry to these facts in its entries for the main property. In connection with this, the following comments are relevant:

> [T]he third person should understand that he is affected both by the separate registration of the apartment or premises he acquires and by what

> appears in the registration of the building as a whole, of which his apartment forms part, be they the Bylaws, the rules of the master deed establishing the regime, or the charges, mortgages, and other liens that may have been established over the total building.
>
> For the third person and for all other persons, the Registry shall always be formed by both Registry folios: that of the whole building and that of the independent apartment or premises. C. Altarriba Sivilla, Los Principios Hipotecarios y la Propiedad Horizontal, 51 Revista Crítica de Derecho Inmobiliario 79, 93.

If this is so when the apartment is legally a separate property, it should be even more so when it has not yet been segregated from the original property and alienated, but merely individualized to be segregated and alienated later on.

Therefore, the judgment under review shall be reversed, and a new one shall be rendered declaring valid the attachments levied on the apartments involved in the present suit.

Mr. Justice Rigau took no part in this decision.

ACR/mef

THE CHASE MANHATTAN BANK, N. A., Plaintiff-Petitioner, v. NESGLO, INC., NESTOR CRUZ SOTO and GLORIA D. DE CRUZ, Defendants; ALBERT REBEL & ASSOCIATES, Intervenor-Respondent.

No. O-80-397. Decided November 17, 1981.

1. RULES OF CIVIL PROCEDURE - PARTIES - INTERVENTION - IN GENERAL - IN GENERAL.
In contrast with the federal rule, under the new Rule 21 of the Rules of Civil Procedure of 1979, it is not necessary for the petitioner seeking to intervene to show that his interest is being inadequately represented by the parties in controversy, and the requirement that the petitioner may later on be barred by a judgment under the doctrine of res judicata was also eliminated.

2. ID. - ID. - ID. - ID.
Although Rule 21.1 of Civil Procedure should be liberally construed, this does not mean that indiscriminate intervention should be sanctioned or that the principle that every possible doubt should be resolved in favor of allowing intervention should be set down.

3. ID. - ID. - ID. - ID. - INTERVENTION OF RIGHT.
A person seeking intervention in a suit must assert a right or interest in the property or matter that is the object of the litigation, and show that said interest or right may actually be affected by the final disposition of the case.

4. ID. - ID. - ID. - ID. - ID.
The test to be used in determining whether a person should be allowed to intervene in a suit is of a practical nature, to wit, if there is an interest that should be protected and if, as a practical matter, said interest would be impaired by the absence of the intervenor in the case.

5. ID. - ID. - ID. - ID. - ID.
The decision on whether or not to allow a person to intervene in a suit depends on the balance to be attained in the specific situation between the values in conflict: the interest in procedural economy represented by the solution of several related questions in a single suit, and the interest in preventing suits from becoming fruitlessly complex and unending.

6. ATTACHMENT, GARNISHMENT AND EXECUTION OF JUDGMENT - EXECUTION OF JUDGMENT - PROPERTY SUBJECT TO ATTACHMENT - FACTOR'S LIENS
The preferred credits recognized by art. 1822 of the Civil Code, among which credits for the amount of the sale of personal property in the debtor's possession are included, are expressly subordinated to duly recorded factor's liens.

7. PURCHASE AND SALE - PERSONAL PROPERTY - CONDITIONAL SALES - OPERATION AND EFFECT OF CONDITIONS AS BETWEEN PARTIES AND AS TO THIRD PERSONS - RECORDATION OF CONTRACT.
The credit arising from a conditional sales contract takes precedence over a duly recorded factor's lien if, and only if, the conditional seller records his credit pursuant to art. 4 of the Puerto Rico Conditional and Installment Sales Act and said recordation precedes that of the factor's lien.

PETITION FOR CERTIORARI to review a RESOLUTION of Pedro J. Martínez Montañez, Judge (San Juan), allowing an intervention in a suit. The resolution under review is modified to limit the intervention to the determination of a particular issue, and thus modified it is affirmed.

María del Carmen Taboas from Fiddler, González & Rodríguez for petitioner. Leopoldo C. Delucca for intervenor-respondent.

IN THE SUPREME COURT OF PUERTO RICO

The Chase Manhattan Bank, N.A.,

Plaintiff-petitioner

v. No. 0-80-397 Certiorari

Nesglo, Inc., Néstor Cruz Soto
and Gloria D. de Cruz,

Defendants

Albert Rebel & Associates,

Intervenor-respondent

San Juan, Puerto Rico, November 17, 1981

PER CURIAM: In November 1979, The Chase Manhattan Bank, N.A. ("Chase") sued Nesglo, Inc. ("Nesglo"), Néstor Cruz Soto, and Gloria D. de Cruz (the "sureties"). Chase alleged that Nesglo and its sureties owed it $460,000, plus interest, costs, and attorney's fees under a factor's lien duly executed and recorded under the provisions of Act No. 86 of June 24, 1954 (10 L.P.R.A. § 551 et seq.). Information was given about the details of the registration of the contract. To secure the effectiveness of the judgment, Chase attached certain property.

On February 11, 1980, Albert Rebel & Associates ("the intervenor") asked for permission to intervene in the suit on the grounds that it held a preferential lien over the attached property. It alleged that Nesglo owed it $53,138.11 for equipment bought on credit. After several incidents, on June 11, 1980, the court below allowed the intervention against which this appeal has been taken.

While this petition was in the process of perfection and decision, the court below entered a judgment by default against Nesglo and the sureties. To protect the intervenor's

possible rights, the court below ordered that, from the money deposited with the Office of the Clerk $53,138.11 be frozen, until the Supreme Court decided the present petition. Said judgment is at present final and unappealable. Consequently, the question to be decided in the instant case boils down to a determination of whether Rebel & Associates' intervention should be allowed in order to determine if it has a preferred right over Chase to the $53,138.11 deposited with the court.

Rule 21.1 of the Rules of Civil Procedure, which regulates intervention of right, provides:

> Upon timely application anyone shall be permitted to intervene in an action: (a) when a statute or these rules confer an unconditional right to intervene; or (b) when the applicant claims a right or an interest relating to the property or transaction which is the subject of the action which may as a practical matter be impaired by the final disposition of the action.

The history of this rule reveals a drawn-out effort to liberalize the rules on intervention. For an analysis of its forerunners--art. 72 of the Code of Civil Procedure of 1904 and of 1933, Rule 24 of Civil Procedure of 1943 and Rule 21 of 1958--see: Cappalli, The Guest Who Came to Dinner: Intervention Practice in Puerto Rico Civil Procedure, 40 Rev. Jur. U.P.R. 461 (1971).

[1] Rule 21.1 in force, which partly corresponds to Rule 24(a) of the federal rules, considerably extends the scope of the intervention of right. In contrast with the federal rule, it is no longer necessary for the petitioner to show that his interest is being inadequately represented by the parties in controversy. The requirement established by the case law that the petitioner may later on be barred by a judgment under the doctrine of res judicata was also eliminated. Comments to Rule 21.1, Reglas de Procedimiento

Civil para el Tribunal General de Justicia--1979, at 52 (1979) (Equity Publishing Corp., Orford, N.H.). An effort has been made to make the rule as flexible as possible.

[2] The history of the rule shows that it should be liberally construed in the light of the ends it pursues. The liberalization carried out is not equivalent, however, to sanctioning indiscriminate intervention or to setting down the principle that every possible doubt should be resolved in favor of allowing intervention. 7A Wright & Miller, Federal Practice and Procedure, sec. 1904, at 474; Ready Mix Concrete v. R. Arellano & Co., 110 D.P.R. 869 (1981).

[3-5] Rule 21.1 imposes limits on intervention. The petitioner should assert a right or interest in the property or matter that is the object of the litigation, and should show that said interest or right may actually be affected by the final disposition of the case. The new rule, however, demands a subtle change in approach. Now it is not a question, as it was before, of analyzing, in a more or less abstract way, the nature of the interest in question. The test to be used is of a more practical nature. Is there a de facto interest that should be protected? Would said interest be impaired, as a practical matter, by the absence of the intervenor in the case? The analysis may vary from one case to the other. The decision depends, basically, on the balance to be attained in the specific situation between the values in conflict: the interest in procedural economy, represented by the solution of several related questions in a single suit, and the interest in preventing suits from becoming fruitlessly complex and unending. 7A Wright & Miller, op. cit. at 483, 509.

Let us apply these principles to the case at bar. The intervenor supports the existence of its alleged lien

on the provisions of the first item of art. 1822 of the Civil Code, 31 L.P.R.A. § 5192, which provides:

> With regard to specified personal property of the debtor, the following are preferred:
>
> 1. Credits for the construction, repair, preservation, or for the amount of the sale of personal property which may be in the possession of the debtor to the extent of the value of the same. (Underscore supplied.)

The intervenor sold Nesglo some personal property. Is the intervenor correct in its statement that the cited provision recognizes the preferred status of its credit over the one derived from the factor's lien given out by Chase?

[6] The answer is clearly no. The preferred credits recognized by art. 1822 of the Civil Code are expressly subordinated to duly recorded factor's liens. Article 6 of Act No. 86 of June 24, 1954 provides:

> Against a factor's lien contract recorded as prescribed in this chapter, no claim against the debtor shall prevail which is not secured by lien perfected prior to the recording of such contract; Provided, however, That such recording shall not prevail over encumbrances established by law to secure claims of workmen, suppliers, owners of real property, as well as claims of the Commonwealth of Puerto Rico or of the corresponding municipality as regards credits in its favor for the taxes on the property the subject matter of such contract due and unpaid for the current and the preceding three (3) years. The effectiveness and preferences of a factor's lien contract shall not be affected in any manner by what might be provided to the contrary or inferred from the provisions of sections 5192 and 5193 of Title 31.

At no time has the intervenor alleged that the total sums deposited with the court exceed the amount owed under the factor's lien. Therefore, if the intervenor relies only on the provisions of art. 1822 of the Civil Code, and if it does not allege that Chase has been paid or could be paid an amount larger than that owed under the factor's

lien if Chase were given the money deposited with the court, the intervenor is not entitled to intervene because it has no interest that could conceivably be affected by the delivery of the deposited amount to Chase. To allow the intervention under said circumstances would not only complicate the suit unnecessarily, but would be useless.

[7] However, the record is silent on an important matter. If the intervenor recorded its conditional sale under the provisions of art. 4 of Act No. 61 of April 13, 1916, as amended, 10 L.P.R.A. § 34, and if said registration is prior to that of the factor's lien, then its lien has taken precedence over Chase's lien and it would be entitled to intervene to prove its alleged right to the $53,138.11 deposited with the Clerk of the Superior Court.

For the sake of procedural economy, and given the simplicity of the remaining evidence, we will allow Rebel & Associates to intervene, but only for the purpose of attempting to prove that it holds a conditional sales contract that was recorded before the factor's lien or that Chase has received, or would receive, if the deposited amount were delivered, an amount in excess of what was owed to the bank. The Court shall fix a term of a few days for said purpose, and the intervenor is ordered, under penalty of contempt, to deliver to the factor the money deposited with the court.

The resolution being appealed shall be modified pursuant to the above, and the case is remanded to the court below for further proceedings consistent with this opinion.

Mr. Justice Negrón García took no part in this decision.

ACR/ba